

ORAL ARGUMENT NOT YET SCHEDULED**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Denka Performance Elastomer LLC*Petitioner*

v.

Environmental Protection Agency and
Michael Regan, Administrator, United
States Environmental Protection
Agency,*Respondents*

Air Alliance Houston, et al.,

Intervenors

No. 24-1135Consolidated with 24-1228, 24-1246,
24-1249, 24-1250, 24-1251, 24-1252**JOINT RESPONSE TO ORDER RE PROPOSED BRIEFING FORMATS
FOR CONSOLIDATED CASES**

The Parties in these consolidated cases file this Response to the Court's Order on July 18, 2024, which requested that the Parties submit proposed formats for briefing of the cases by August 19, 2024. The Parties hereby request an extension of 30 days from that date – to September 19, 2024 – to file such proposed formats for the reasons set forth below. All Industry Petitioners (24-1135, 24-1249, 24-1250, 24-1251, 24-1252) as well as State Petitioners (24-1228 and 24-1246) support this Response. Respondents (EPA) do not oppose it.

Respondent-Intervenors take no position on the requested extension and reserve the right to take a position after viewing the request. Respondent-Intervenors are prepared to move forward with the Court's August 19 deadline and to resolve Petitioners' challenges expeditiously.¹

The grounds for this Joint Response are as follows:

First, Petitioners here challenge a Final Rule issued by EPA entitled *New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry*, 89 Fed. Reg. 42932 (May 16, 2024). This Final Rule is actually a series of complex revisions by EPA to several Clean Air Act regulations under different regulatory programs (New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs)) that EPA has consolidated into a single package.² Industry and State Petitioners believe that certain provisions of the Final Rule are unlawful, but need more time to formulate precisely those issues they intend to brief in this challenge.

¹ These include Sierra Club, California Communities Against Toxics, Air Alliance Houston, Environmental Integrity Project, Concerned Citizens of St. John, RISE St. James Louisiana, Louisiana Environmental Action Network, Texas Environmental Justic Advocacy Services, Air Alliance Houston, California Communities Against Toxics.

² See *id* at 42942-45 (detailing the NESHAPs and NSPS standards addressed in the rules).

Second, various provisions impact Petitioners differently. Accordingly, some Petitioners have already or may file administrative petitions for reconsideration with EPA. Parties may seek to stay the court case, at least with respect to those issues. Others may seek to sever out particular issues and request expedited briefing and a quick resolution by this Court.

Finally, while some Petitioners have filed their nonbinding issue statements (24-1135 and 24-1228), the court's order on July 16, 2024 (Doc. No. 2064929), does not require any party to file its issue statement until August 15, 2024. Because the Parties do not know the precise number of issues raised, the Parties are not in a position at this time to make a recommendation to the Court on a proposed briefing format or word limits in briefs to be filed.

For all of these reasons, the Parties respectfully request that the Court grant an additional 30-day extension to September 19 for a joint proposal regarding formats for the briefing of these cases.

Respectfully submitted,

/s/ David Friedland

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CERTIFICATE OF COMPLIANCE

The foregoing Motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) and Circuit R. 27, because it contains 489 words, excluding those parts of the Motion exempted by Fed. R. App. P. 32(f). I further certify that the foregoing brief also complies with Fed. R. App. P. 32(a)(5) and (6) because it has been prepared using Microsoft Word 365 in 14-point proportionally spaced Times New Roman font.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August 2024, the foregoing Motion was served electronically on all registered counsel through the Court's CM/ECF system on all registered counsel.

Respectfully submitted,

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